UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/Sub.2/AC.4/1995/7/Add.2
6 July 1995

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Subcommission on Prevention of
Discrimination and Protection
of Minorities
Working Group on Indigenous Populations
Thirteenth session
24-28 July 1995
Item 9 of the provisional agenda

WORKING GROUP ON INDIGENOUS POPULATIONS

CONSIDERATION OF A PERMANENT FORUM FOR INDIGENOUS PEOPLE

The present document contains the background papers prepared by the independent experts, Mrs. Erica-Irene A. Daes, Chairperson-Rapporteur of the Working Group on Indigenous Populations, and Mr. Rodolfo Stavenhagen, Professor at El Colegio de México. Both documents were circulated during the Workshop on a Permanent Forum for Indigenous People held at Copenhagen on 26-28 June 1995.

Working paper prepared by Mrs. Erica-Irene A. Daes, expert and Chairperson-Rapporteur of the Working Group on Indigenous Populations

Introduction

1. The World Conference on Human Rights, in its Vienna Declaration and Programme of Action (A/CONF.157/23), recommended that the General Assembly establish a permanent forum for indigenous people within the United Nations system. In its resolution 48/163 of 21 December 1993, proclaiming the International Decade of the World's Indigenous People, the General Assembly requested the Commission on Human Rights to give "priority consideration" to the establishment of a permanent forum for indigenous people within the United Nations system.

2. In response to this request the Commission on Human Rights, by its resolution 1994/28 of 4 March 1994, requested the Working Group on Indigenous Populations to give the establishment of a permanent forum priority consideration at its twelfth session, and to transmit its "suggestions for alternatives" through the Subcommission to the Commission at its fifty-first session. To facilitate the consideration of this issue at the Working Group, the Chairperson-Rapporteur of the Working Group prepared an important and comprehensive note (E/CN.4/Sub.2/AC.4/1994/13), outlining some of the questions that would be discussed when considering the establishment of a permanent forum.

3. On the basis of the discussion which took place during the twelfth session of the Working Group, which included the consideration of a very useful paper submitted by the Government of Denmark (E/CN.4/Sub.2/AC.4/1994/CRP.3), the Chairperson-Rapporteur developed some informal and constructive guidelines for the establishment of a permanent forum which were contained in the annex to the Report of the Working Group on Indigenous Populations on its twelfth session (E/CN.4/Sub.2/1994/30).

4. In its report, the Working Group stated that it believed that it would be useful to hold further consultations on the question of a permanent forum. Subsequently, the Subcommission in its resolution 1994/50 of 26 August 1994 recommended that the Centre for Human Rights organize a workshop on a possible permanent forum for indigenous people with the participation of representatives of Governments, indigenous organizations and independent experts.

5. In resolution 49/214 of 23 December 1994, the General Assembly recognized the importance of considering the establishment of a permanent forum for indigenous people and requested the Commission to make recommendations in that regard. As a result, the Commission in its resolution 1995/30 of 3 March 1995 endorsed the recommendation of the Subcommission to organize a workshop on this matter.

I. MAIN QUESTIONS RELATING TO THE ESTABLISHMENT OF A PERMANENT FORUM FOR INDIGENOUS PEOPLE

6. For the sake of clarity it is felt important to touch upon the nomenclature of the issue at hand. Confusion concerning the status of the Working Group on Indigenous Populations vis-à-vis a possible permanent forum has arisen because of language adopted at the World Conference on Human Rights which called for "the establishment of a permanent forum for indigenous people in the United Nations" and stated that the Commission on Human Rights should "consider the renewal and updating of the mandate of the Working Group on Indigenous Populations upon completion of the drafting of a declaration on the rights of indigenous people" (A/CONF.157/23, part. II, para. 29).

7. This language suggests that the Working Group is somehow not "permanent" and that its mandate needs renewal. However, the contrary is true. So far, no decision has been taken to dissolve the Working Group and the decision by which the Economic and Social Council established the Working Group (resolution 1982/34 of 7 May 1982) does not set a time-limit. In addition, the nature of its mandate, that is to "review of developments pertaining to

the promotion and protection of human rights and fundamental freedoms of indigenous populations" and "give special attention to the evolution of standards concerning the rights of indigenous populations", does not imply any such limit. Furthermore, in resolution 1995/31 the Commission on Human Rights "urges the Working Group to continue its comprehensive review of developments", thus reinforcing the importance it attaches to the work of the Working Group.

8. It could be considered useful to change the term "permanent forum" to, for instance, "higher forum" so as to take away the existing confusion that might hamper the discussions on, and the establishment of such a forum.

9. In the note prepared by the Chairperson-Rapporteur for the twelfth session of the Working Group, five main questions were identified relating to the establishment of a permanent forum. These are:

(a) What will be the mandate of the forum?

(b) What will be the structure of the forum?

(c) How should participation in the forum be organized?

(d) What will be the institutional status of the forum?

(e) How should the activities of the forum be financed?

10. These questions were subsequently partly answered by the Chairperson-Rapporteur in the annex to the report of the twelfth session of the Working Group where she offered some informal guidelines for the establishment of a permanent forum.

11. The Chairperson-Rapporteur also draws attention to the aforementioned paper from the Government of Denmark concerning a permanent forum, which reviews the above-mentioned questions and elaborates some comprehensive, feasible answers relating to the establishment of a forum.

12. The purpose of considering these questions is not so much as a guide but more as a stimulus to reflexion by the participants at the Workshop.

II. CONSIDERATION OF EXISTING COMMITTEES, COMMISSIONS AND OTHER FORUMS WHICH MIGHT SERVE AS A GUIDE FOR A FUTURE PERMANENT FORUM FOR INDIGENOUS PEOPLE

13. Aspects of precedents in other areas of the United Nations system could assist as a guide for the establishment of the forum. In consequence, the forum will be more easily recognizable within the framework of the United Nations by the indigenous peoples, the United Nations bodies and the Member States.

14. In this regard, the Chairperson-Rapporteur is of the opinion that aspects of the establishment of the United Nations Development Fund for Women (UNIFEM) could serve as a possibly useful precedent within the framework of the United Nations.

15. UNIFEM was created by the General Assembly at its thirty-ninth session by resolution 39/125 of 14 December 1984. In this resolution the Assembly decided that the activities of the Voluntary Fund for the United Nations Decade for Women should be continued by the establishment of a separate entity in autonomous association with the United Nations Development Programme (UNDP).

16. Originally, the Voluntary Fund for the Decade for Women stems from the Voluntary Fund for the International Women's Year whose operation was extended to cover the activities of the Decade.

17. The mandate of UNIFEM is twofold:

(a) to serve as a catalyst with the goal of ensuring the appropriate involvement of women in mainstream development activities;

(b) to support innovative and experimental activities benefiting women in line with national and regional priorities.

18. To implement this mandate UNIFEM collects, analyses and disseminates relevant information, supports innovative and experimental projects and advocates the enhancement of the position of women at all levels. All of UNIFEM's programmes and initiatives are geared towards achieving equality between women and men under the slogan that all issues are women's issues. Its programmes are aimed at providing a coordinated effort to enhance the position of women.

19. The structure of UNIFEM is laid down in General Assembly resolutions 31/133 and 39/215. Since UNIFEM's activities are operational, describing UNIFEM's structure here only serves a partial purpose, that is if the ultimate permanent forum would have an operational side to its functioning, for instance in the form of a fund.

20. As stated earlier, UNIFEM is a separate entity in autonomous association with UNDP. UNIFEM is administered by the Administrator of UNDP, who is assisted in his task by the Consultative Committee of the Fund. The Consultative Committee consists of five member States whose representatives serve for a period of three years. The Administrator appoints a Director and staff, in consultation with the Director. The Administrator delegates the management of the Fund and its administration, including the mobilization of the resources, to the Director.

21. The Administrator of UNDP is accountable for all aspects of the management and operations of the Fund. The Director in turn is accountable directly to the Administrator. The Administrator of UNDP has to submit an annual report on the operations, management and budget of the Fund, taking into account the advice of the Consultative Committee of the Fund, to the Governing Council of UNDP.

22. UNIFEM is located at United Nations Headquarters in New York. In addition, UNIFEM has 10 subregional offices in Asia and the Pacific, Latin America and Africa. In countries without a regional office, the Fund works through the offices of the United Nations Development Programme. In addition, UNIFEM enjoys the support of 16 national committees.

23. Governments, intergovernmental organizations and private entities may contribute to UNIFEM. The resources of the Fund are a supplement to, and not a substitute for, the mandated responsibilities of other United Nations development cooperation organizations and agencies, including UNDP. All the administrative and programme support costs of the Fund are met from its own resources.

III. POSSIBLE MODELS FOR A PERMANENT FORUM AND EVALUATION OF THEIR RESPECTIVE STRENGTHS AND WEAKNESSES

24. Looking at the establishment of UNIFEM it is easy to see that there are some striking similarities between the development of the women's issue in the United Nations and that of indigenous people. First, an International Year was proclaimed, followed by an International Decade. Similarly, the General Assembly in resolution 49/214 of 23 December 1994 expected the establishment of the permanent forum to take place within the framework of the Decade. Logically, the permanent forum will be developed taking into account the successes and weaknesses of the Decade.

25. The main difference is of course that UNIFEM is a fund. To the contrary, the permanent forum is unlikely to be a fund, although it can be envisaged that a permanent development fund would contribute greatly to the implementation of whatever mandate the permanent forum might eventually have.

26. When looking for a possible model for the permanent forum we have to ask ourselves one question: What do we want the forum to accomplish? The answer to this question will give direction to our discussions. In my view the permanent forum should be a forum that promotes, coordinates and evaluates international cooperation activities that directly affect indigenous peoples.

A. United Nations body to which the proposed forum would report

27. The challenges faced by indigenous peoples today touch upon every facet of the United Nations. Because of this, it is appropriate to locate the permanent forum at a level where the greatest possible effective coordination can be achieved.

28. The Economic and Social Council is the principal organ for supervising the economic and social activities of the United Nations system concerning human rights, the environment, development, health, education, cultural matters, etc. One of its main tasks is overseeing and coordinating the different United Nations activities undertaken in the relevant fields. As such it would be ideal if the permanent forum would be placed under ECOSOC, especially because a range of subsidiary organs and advisory committees is already placed there, thus enabling the forum to draw on existing expertise and experiences.

B. Mandate and terms of reference

29. If the forum should be in a position to coordinate all United Nations activities that directly affect indigenous people it should logically have a mandate that allows them to do so. This means that all areas which concern indigenous peoples should fall within this mandate. This includes almost all areas in which ECOSOC is active.

C. Activities that might be undertaken by the forum

30. Many different activities can be undertaken by the forum when it is given the mandate proposed above. Examples can be given in all three areas. In the area of promotion, it could develop a strategy that will enhance general and specific knowledge of indigenous people and their problems. As part of this effort it could be authorized, in cooperation with competent United Nations bodies, to gather, and publish annually, information on the conditions and needs of indigenous people in every part of the world.

31. In the area of coordination and evaluation it could be authorized to monitor the implementation of the United Nations Declaration on the Rights of Indigenous Peoples. In doing that it would automatically evaluate activities undertaken which would enable it to provide ECOSOC with the information and guidelines needed to coordinate efforts undertaken which affect indigenous people.

32. Finally, it is essential that the permanent forum has a strong operational focus, consistent with recommendations made by indigenous peoples themselves in the course of the planning for the International Year and the International Decade of the World's Indigenous People. It could, for example, periodically convene workshops and round tables for the staff of specialized agencies, United Nations operational bodies and indigenous peoples, both at the Headquarters level and at the national and regional levels. It could also maintain communications with indigenous organizations and individual experts, to facilitate their direct participation in operational programmes and their recruitment for technical and professional roles throughout the United Nations system.

D. Membership

33. The forum should consist of 10 members, 5 governmental and 5 indigenous representatives. This will ensure adequate representation of both governmental and indigenous entities, without making the forum too large for it to come to decisions.

34. Governmental members of the forum could be elected by the Economic and Social Council according to the relevant rules and bearing in mind the five regions as used by the United Nations. The five indigenous members could be appointed by the Secretary-General from a list of nominations made every four years by organizations of indigenous peoples. Further thought has to be given to the question of regional representation since the regional division used in the United Nations is not applicable to indigenous people.

E. Participation of indigenous people

35. The forum should be open to equal participation by all the world's indigenous peoples, through their own representatives. Restricting participation in the forum to indigenous organizations which have consultative status with ECOSOC would be inappropriate, particularly because only one of the indigenous NGOs that currently enjoys consultative status comes from the South. The Working Group has functioned well over the years with no formal accreditation procedure. What also might be considered, however, is the procedure adopted by the Commission on Sustainable Development, by which any relevant organization may apply directly to the Commission for accreditation. This accreditation is then valid for all future meetings of the Commission on Sustainable Development but not for other United Nations bodies.

F. Relationship with the Working Group on Indigenous Populations

36. As stated above, the establishment of a permanent forum does not automatically signify that the Working Group on Indigenous Populations will cease to exist. Therefore, it is necessary to delimit their respective mandates so that their efforts are complementary and not overlapping. The most logical avenue would be that the Working Group would, under the auspices of the Commission, become an advisory body on matters that deal with the rights of indigenous people since this is its principle mandate and the area in which it has more expertise than any other body in the United Nations. The forum would be able to draw on this valuable expertise and would also be able to concentrate its efforts more on other, lesser known matters, knowing that it has a reliable advisory body when it comes to indigenous rights.

G. Financial and secretariat implications

37. The meetings of the forum should be financed from the regular budget of the United Nations. This not only ensures that meetings will take place at regular intervals but also has an important symbolic meaning to indigenous people in showing that they are taken seriously by the United Nations.

38. The forum should be serviced by an independent unit within the Secretariat, reporting at the highest possible level. The minimum feasible number of Professional Staff, I believe, would be three. At least two of these three should be indigenous persons. The meetings of the Working Group on Indigenous Populations, which I have chaired for almost 12 years now, and the conferences, seminars and workshops I have attended around the world, convince me that there are now many highly qualified indigenous persons, including lawyers, economists and other scientists, in all relevant regions of the world. In addition, in my opinion, one member of this special unit - permanent forum - should be an experienced, high-level international official with considerable personal knowledge and experience of indigenous affairs. This person must serve, inter alia, as an ambassador and advocate of the indigenous unit to other high-level United Nations system officials and bodies as well as to national governments.

39. Depending on the mandate of the forum, it could be envisaged that its activities require the establishment of a fund. Considering the financial constraints under which the United Nations has to operate this will most probably be a voluntary fund at the beginning and later should be financed from the United Nations regular budget.

H. Other matters such as location of the forum

40. The location of the forum will depend on its mandate which in turn will determine its activities. The more operational the mandate the more there will be a need to have staff placed in different parts of the United Nations system including UNDP country offices. It would be useful to hold meetings away from Geneva or New York. If the appropriate funding is available, there is no reason why the forum could not meet in places other than New York/Geneva. One reason for that would be to enhance accessibility to indigenous people and to inform more effectively world public opinion.

The rights and participation of indigenous peoples: a challenge for our time

Working paper prepared by Rodolfo Stavenhagen, Colegio de México

1. For more than a decade now, the representatives of different organizations of indigenous peoples from various parts of the world have been participating actively in the discussions of the United Nations Working Group on Indigenous Populations. They also participated in the discussions which led, in 1989, to the adoption of International Labour Organization Convention No. 169. They have also taken part in various international meetings convened by non-governmental organizations on the occasion of "summit" conferences organized by the United Nations. For instance, indigenous participation was particularly notable at the non-governmental forum, known as Kari Oka, which was held in conjunction with the Earth Summit at Rio de Janeiro in 1992. Indigenous persons were also actively involved in NGO forums connected with the World Conference on Human Rights (Vienna, 1993).

2. This growing presence of indigenous peoples in international forums, alongside government representatives, reflects not only the justice of the demands that those peoples have been making for many years now, but also the growing sophistication of their approach in successfully creating for themselves a permanent, and not just occasional, niche in the international bodies where the major problems of our time, which are those of indigenous peoples too, are discussed.

3. Anyone who has followed the development of the discussions of the Working Group on Indigenous Populations will recall that, in the early years, at the beginning of the 1980s, indigenous representation was slight and was limited to delegates from a few industrialized countries or to individuals who happened to be in the vicinity of Geneva, thus making it easier for them to travel to and attend the meetings. It will also be recalled that numerous grass-roots indigenous organizations in various countries totally ignored the dynamic of this Working Group and the importance which it was to attain in later years.

4. These initial pitfalls were overcome within a few years. In time, participation by indigenous organizations became extensive and active, and the annual sessions of the Working Group provided them with an opportunity not only to participate in the elaboration of the draft declaration on the rights of indigenous peoples but also, and perhaps most especially, to carve out a space for communication in the international community which would otherwise not have opened up.

5. The International Year for the World's Indigenous People in 1993 and the proclamation of the International Decade of the World's Indigenous People have provided additional opportunities to consolidate this space. The possibility of establishing a Permanent Forum for Indigenous People within the United Nations opens up important prospects for the comprehensive treatment of all problems afflicting these peoples in various parts of the world. The establishment of a Permanent Forum for Indigenous People would represent a further step in the construction of a United Nations system of peoples and not only of Governments, an aspiration which has been pursued for many years by a great variety of civil, grass-roots and non-governmental organizations.

6. The discussion paper prepared by the Greenland Home Rule Government of the Government of Denmark (see E/CN.4/1995/141) explores various possibilities for the organization, structure and financing of such a permanent forum, which will certainly be analysed at this expert meeting. I shall confine myself in this document to referring to some recent experiences of indigenous participation in multilateral bodies, which might serve as a point of reference for our discussions.

7. When the International Labour Organization decided to revise the Indigenous and Tribal Populations Convention, 1957 (No. 107), it arranged various consultative meetings which were attended by indigenous representatives of a number of non-governmental organizations. A special feature of ILO in relation to other organs of the United Nations system is its tripartite structure, under which the delegations of the States members of its Governing Body and delegations to the General Conference are composed of a government delegate, a delegate of the employers and a delegate of the workers. At the meeting of experts on the revision of the Convention held at Geneva in September 1986, some indigenous representatives participated as members of the workers' delegation of certain States. In general, the indigenous organizations found that their representation and participation were minimal, and it was only because the workers' delegations made room for them that they were able to participate.

8. As part of the activities for the International Decade of the World's Indigenous People, UNESCO has organized various events on educational, scientific and cultural topics which have been attended by individual indigenous experts from different parts of the world. Although UNESCO has a variety of activities of interest to the indigenous peoples, the event which had the greatest impact in the recent past was undoubtedly the meeting of indigenous experts organized by Rigoberta Menchú Tum, the 1992 Nobel Prize laureate, which was held at UNESCO headquarters in February 1995. Among the wide range of subjects dealt with by UNESCO, education in the vernacular and bilingual instruction, preservation of cultural identity and cultural development, intellectual property rights in respect of cultural products,

recovery of artistic and cultural property illegally removed and/or exported, preservation of ecosystems, etc. are of particular relevance to indigenous peoples. Although these peoples as such are not represented in UNESCO, it is a fact that they have sent experts to various national, regional and international events convened or sponsored by this intergovernmental organization.

9. A very interesting experiment is currently under way in the Latin American region. At their summit meeting in Madrid in 1992, the Ibero-American heads of State decided to establish the Fund for the Development of the Indigenous Peoples of Latin America and the Caribbean (the Indigenous Fund), a new inter-State institution whose aim is to promote the processes of self-development of indigenous peoples, communities and organizations of the region, over the long term and in sustainable form, recognizing the integrity of their territories, fundamental rights and cultural characteristics. Earlier, at the First Ibero-American Summit, held in Mexico in July 1991, the heads of State had declared: "We recognize the immense contribution the indigenous peoples have made to the development and pluralism of our societies and we reiterate our commitment to their economic and social well-being and our obligation to respect their rights and cultural identities".

10. With a view to achieving its objectives, the Fund establishes mechanisms for dialogue and coordination between the indigenous peoples, Governments within and outside the region, and international and non-governmental organizations. The purpose of the Indigenous Fund is to assist in the formulation of policies, to finance development projects and to provide technical assistance for the benefit of the indigenous peoples of Latin America and the Caribbean. The Fund's activities are to be focused on four priority areas: resources for sustainable self-development, the rights of indigenous peoples, training for administration and participation, and identity and culture. Although the Fund has no resources of its own, it is trying to mobilize contributions from various sources in support of the above objectives. To date, it has succeeded in obtaining resources from the Inter-American Development Bank, the World Bank, the European Union and a number of other donors.

11. The minimum number of ratifications having been obtained (so far, 11 States have ratified the Constituent Agreement), the first General Meeting of the Fund was held in Bolivia in May 1995, with the attendance of delegates from 18 States signatories of the Agreement. Under this constituent instrument, the delegations of member States must be composed of one government delegate together with one indigenous peoples' delegate from the State concerned, accredited by the respective Government following the relevant consultations with indigenous organizations. Similarly, the Board of Directors of the Indigenous Fund is composed of nine members elected by the General Meeting and representing in equal proportions the Governments of the States of the region, the indigenous peoples of those States and the Governments of other member States outside the region.

12. At the General Meeting held in Bolivia, the indigenous delegates participated on an equal footing with the government delegates. The Meeting witnessed the formation of the first Board of Directors of the Fund, which is currently composed of five government representatives (Bolivia, El Salvador, Spain, Mexico and Portugal) and three indigenous representatives (Colombia, Honduras and Paraguay). There has to be one General Meeting each year and the Board of Directors must meet at least three times a year. In similar fashion to the practice of the International Labour Organization, the governmental group and the indigenous group met separately to exchange opinions and agree positions that were later expounded in plenary. The elected indigenous members of the Board of Directors were nominated by all the indigenous participants present, and on accepting office they stated that they regarded themselves as representatives of all the indigenous peoples of Latin America, and not just a particular country.

13. To my knowledge, the Indigenous Fund is the first intergovernmental institution in which indigenous peoples as such participate in the governing bodies. However, there is no doubt that States maintain control of the Fund, since under the Constituent Agreement, decisions are taken by unanimous affirmative vote of the delegates of member States of the region, together with a majority of affirmative votes of representatives of other member States (currently two) and a majority of affirmative votes of delegates of indigenous peoples. As is the case with meetings of the United Nations Working Group on Indigenous Populations, indigenous participation in the Fund's first General Meeting was free and unrestricted. In accordance with the request made by the indigenous representatives and the participatory spirit with which the Fund has been imbued since its establishment, the Meeting decided that all representatives of indigenous peoples and organizations present, either as official delegates, observers or guests, would be allowed to speak during the proceedings, which indeed they proceeded to do with considerable enthusiasm.

14. There are other mechanisms for indigenous participation in the American regional system. Since 1940 the Inter-American Indian Institute has been functioning as a part of the Organization of American States and a body of the States of the region aimed at coordinating Governments' indigenous policy. However, as a result of the growing presence of indigenous movements in the Americas, for a number of years now the indigenous peoples have been demanding effective participation (so far denied to them) in this body, and at the periodic Inter-American Indigenous Congresses they organize parallel forums in their capacity as non-governmental organizations. Consideration is currently being given to the possibility of reorganizing this Institute, and it may be that, as is the case with the Indigenous Fund, indigenous peoples will be incorporated in its future structure.

15. At its 1989 General Conference, the Organization of American States (OAS) invited its subsidiary body, the Inter-American Commission on Human Rights, to study the possibility of preparing a new inter-American legal instrument on the rights of indigenous peoples. This is an important step, since current inter-American legislation on human rights contains only a reference to the indigenous peoples in the Inter-American charter of social guarantees (1948). Intensive consultations have been in progress for several years with

Governments and numerous indigenous organizations in the Americas with the ai of preparing a draft legal instrument (perhaps, initially, a declaration) for possible adoption by the OAS.

16. Because of the economic, environmental and social impact of the development projects it helps to finance, it is also important to mention the relationship between the World Bank and the indigenous peoples. In 1982 the Bank recognized that certain development projects could have adverse consequences for the survival and living conditions of tribal and indigenous peoples, and adopted a directive on the matter. After a number of years of evaluation and public debate on the impact of the Bank's policies on indigenous and tribal peoples and their environment, the Bank, in 1991, adopted Operational Directive 4.20, which is broader in scope than the previous instruction. The main aim of this new directive is to ensure that the development process of indigenous peoples is not adversely affected, particularly by projects financed by the Bank itself. The Bank's current policy is that strategy relating to matters affecting indigenous peoples must be based on the conscious participation of those peoples. Finally, it is worth mentioning the interest in the problems of indigenous peoples that has been shown by the various institutions of the European Union, particularly the European Parliament which, between 1988 and 1994, adopted more than 30 resolutions on subjects relevant to indigenous peoples.

17. Through ILO Convention No. 169 and the draft United Nations declaration on the rights of indigenous peoples, the indigenous peoples are being once again regarded as subjects of international law. It is quite obvious also from their active participation in the preparation of these documents and their presence in the conference rooms and corridors of the major multilatera organizations that they are recognized today as new political and social actors in the international system. This has been a long process of intensiv campaigning, not without controversies and setbacks, the results of which are now beginning to appear. Although the recognition of the rights of the indigenous peoples is an act of historical justice, it is also necessary to place the achievement of these rights in the wider perspective of the gradual achievement of formal and cultural citizenship by many sectors of the population throughout recent history: women, workers and racial, religious and ethnic minorities.

18. Barely 20 years ago, there were hardly any indigenous organizations wit an international presence (and very few at the national level). Nowadays, as can be observed at the annual sessions of the Working Group, there are hundreds of indigenous organizations that are represented, expound their problems, demand their rights and insist on being heard. Neither the Governments nor the international community as a whole can ignore this presence and these demands, any more than they can ignore the issues of workers, women, children or racial and ethnic minorities. In Latin America, for instance, indigenous people have participated in constituent conventions in some countries; they negotiate with Governments, contend for political power or share in it and, in some cases, take up arms against Governments perceived as oppressors and exploiters. It is a singular fact that they no longer restrict themselves solely to topics of exclusive interest to the indigenous or local population, but also address questions of national and international significance, such as development strategies, the environment c

political democracy. (When this happens, some critics say that these are not "indigenous issues" and thus try to discredit the organizations which bring them up.)

19. The discourse of the indigenous movements has been adapting itself to changing circumstances. In the 1970s and 1980s, in the Americas at any rate, indigenous statements used to question the historical legitimacy of the existing Governments, harp upon historical grievances, demand their original rights and claim recognition of their cultural and ethnic identities. Although these issues still remain valid, there is no doubt that they are encountering a greater response from official bodies and from public opinion and national societies, at least on paper.

20. However, most indigenous organizations now recognize that, if they are to make progress towards their desired objectives, they must focus more and more on precise issues which can be negotiated in specific areas. Thus, in the United Nations Commission on Human Rights or in the Inter-American Commission on Human Rights, human rights are discussed for the purpose of preparing a declaration; in the forum of the World Bank or of the Indigenous Fund, financial resources have to be negotiated for development projects; in other forums, the subject will be regional autonomy, political participation, environment or health. In this change of focus, the general declaratory statement will have to give way to careful and balanced technical analysis. Most of the indigenous organizations are making this change without major problems, establishing themselves as valid negotiating partners of Governments, financial organizations, political parties and even multinational corporations. The establishment of a permanent forum for indigenous people within the United Nations will undoubtedly help to facilitate this transition.

21. It is clear that, at the level of certain governmental bodies, the growing presence of indigenous organizations and their issues is not always welcome, although there are some obvious and notable exceptions. The arguments most frequently heard are concerned with national sovereignty, territorial integration, cultural unity, the need for progress and modernization, fear of disintegration or fragmentation, the universality of human rights or the equality of all citizens before the law and institutions. Behind these arguments, we frequently encounter some fundamental ideas concerning the nature of "the nation", "the State", "progress", "civilization", "the law", or even "the people" or "the race", all of which are concepts deeply rooted in the contemporary history of nation States, particularly those whose constitution derives from Western history. From what we have been able to see in the ideological statements of recent indigenous movements, these do not always share such concepts. Consequently, many indigenous movements have had to overcome strong external and internal oppositions, which are noticeable at the various levels of the current debate.

22. One of the most discussed questions centres on the representativeness of the indigenous delegates in the international (and also national) organizations. Those who question the legitimacy of their participation sometimes assert that only through the holding of democratic assemblies with massive "grass-roots" participation can "authentic" indigenous representatives be accredited. Persons who do not meet these requirements do not have the necessary recognition to be regarded as legitimate. Using these arguments,

they attempt to deny representativeness to many of the indigenous activists, professionals or intellectuals who have played an important role in building the indigenous political and social movement at the international level. It will suffice, however, to recall that, during the first years of existence of the International Labour Organization, the same arguments were brandished against the participation and representation of the workers. However, in the course of time, the workers managed to secure due legitimacy and recognition. I have no doubt that the same will occur with regard to the indigenous representatives.

23. The other side of the coin is that indigenous persons forming part of governmental delegations are also challenged, the argument being that they have been selected by Governments instead of being appointed by independent organizations. Here again, as time passes, I have no doubt that the way will open to authentic representativeness. (The two arguments mentioned have been heard with regard to the composition of the governing bodies of the Indigenous Fund.)

24. As the indigenous peoples open up and consolidate a social, political and cultural space at the national and international levels, it is essential to confront the crucial and complex problem of what indigenousness means. The original definition supplied by the United Nations rapporteur, and essentially taken up in ILO Convention No. 169 and the draft United Nations declaration on the rights of indigenous peoples, is an important starting-point but leaves unsettled many problems of a practical type which will have to be resolved in the future. In some cases, individual membership of indigenous communities or tribes recognized by the State is a technical and legal matter already established by law, whereas in other countries this has yet to be done. In other cases, membership depends on biological criteria (descent by blood) which are not always easy to determine and which tend to divide the population in accordance with outmoded "racial" criteria. In yet other cases, the units recognized are communities or collectivities, with more flexible indicators and, to the extent that legal recognition has implications for public administration, the distribution of resources, the application of the laws, electoral representation and so forth, the definition of an indigenous person vis-à-vis the rest of national society implies various criteria of a social and cultural type. But here problems frequently present themselves with respect to the relationship between the individual and the community, particularly in the context of migratory movements and economic and occupational changes. On the one hand, migrants tend to lose touch with their community of origin, thereby weakening the latter. On the other, there are attempts to reconstruct community identities in the "diaspora", to such an extent that nowadays it is even possible to speak of the existence of "transnational indigenous communities". These situations represent a challenge to any legal codification of the identity of indigenous communities.

25. If anything has demonstrated the great social and cultural changes of recent decades, it is the fact that it is virtually impossible nowadays to speak of pure indigenous communities or individuals anywhere (as it is not possible to speak of "pure" ethnic groups). In the first place, we know from the bitter experience of racism, xenophobia and ethnic cleansing that the myth of racial or ethnic "purity" is one of mankind's most dangerous and destructive ideas and must not be confused in any way with the human right to

cultural identity (which is recognized by international human rights law and constitutes one of the most important claims of the indigenous peoples as of other ethnic peoples without States). It is necessary to clarify carefully the relationship between "cultural identity" as a basic concept of human rights and "ethnic purity" as an expression of exclusivism and hatred for others.

26. In the second place, there is no doubt that the process of cross-breeding (mixture of peoples) has increased considerably in the era of globalization. A growing number of persons can pride themselves on the fact that they have "multiple identities", which enable them to move about with facility in the complex world of today. The indigenous people have learned that, to survive, they have to live in their own world and in the outside world also and that, to the extent that they are at home in the outside world, they can reaffirm their own indigenous identity. This is a complex psychological and cultural problem but one that has practical implications for educational policy and other aspects of the rights claimed by the indigenous peoples.

27. We cannot ignore either the debate that is in process concerning the relationship between collective rights and individual rights. If the indigenous peoples are claiming mainly collective rights (self-determination, cultural identity, control of territory, land, resources, legal recognition, political participation and so forth), what happens to universal individual rights within the indigenous collectivities if these come into conflict with collective rights? The problem is not just an abstract one, since many instances of such conflicts have occurred in practice. Do collective rights prevail over individual rights or individual rights over collective rights? Could this be a subject for consideration in the indigenous forum?

28. As a result of the profound changes of our era, it happens that, in some territories or independent States, indigenous peoples which had previously had a non-dominant position, a position of subordination as defined by the United Nations Working Group, have succeeded in acquiring full exercise of their right to self-determination or else a position of domination or hegemony vis-à-vis other sectors of society. What had previously been claimed as rights have now become privileges over others, who are transformed into "ethnic or national minorities". This has happened, for instance, in some States of the former Soviet Union, in Fiji and elsewhere.

29. Although the problems of the indigenous peoples are for many reasons exceptional (as was recognized quite early on when the United Nations Subcommission included them in its agenda), it is also clear that the indigenous peoples share many problems with other peoples who, in contemporary language, are denominated "national or ethnic, religious and linguistic minorities" (Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, adopted by the General Assembly in December 1992). They are also sometimes known as "unrepresented peoples and nations". As the position of the indigenous peoples is gradually consolidated in international law (and very often also in national law), it will be necessary to study carefully the common problems and interpretation of rights and interests of both types of collectivities. A topic along these lines could make a valuable contribution to the activities in connection with the United Nations Year for Tolerance.
